

# *Hart-Scott-Rodino Act*

## FTC PNO Introductory Seminar

---

### Joint Ventures and Strategic Alliances

Robert S. Schlossberg

April 23, 2002



# *Types of Entities*

---

- Partnerships
- Joint Venture Corporations
- Limited Liability Companies
- Dual Listed Companies

# *Partnerships*

---

## ■ Formation

- The formation of a general or limited partnership is viewed as the acquisition of a partnership “interest,” rather than as an acquisition of voting securities or as an acquisition of partnership assets.
- Because the partners acquire neither voting securities nor assets of a newly created partnership, the transaction is not reportable, regardless of its size.

# *Partnerships* (cont'd)

---

- Transfer of Partnership Interests
  - The acquisition or transfer of less than all interests in a partnership is not a reportable event.
  - If an entity acquires 100% of the partnership interests, it is deemed to be acquiring the underlying assets of the entire partnership.
  - The size-of-transaction test will be determined by the FMV of all of the partnership's assets.

# *Joint Venture Corporations*

---

- When two or more entities form a joint venture corporation, the acquisition of voting securities in the new corporation by the contributors to the JV is potentially reportable.
- The contributors to a JV are each deemed “acquiring persons,” and the JV is deemed the “acquired person” (whenever an acquiring person is required to file, the JV need not file).
- The size-of-person test is not applicable to acquisitions in excess of \$200 million to the acquisition by that contributor. The size-of-person test would be applicable to other contributors acquiring between \$50 million and \$200 million of voting securities in the same formation.

# *Joint Venture Corporations (cont'd)*

---

- An acquiring person having annual net sales or total assets of \$100 million or more must make an HSR filing if:
  - (1) The JV will have total assets of \$10 million or more;
  - (2) At least one other acquiring person has annual net sales or total assets of \$10 million or more; and,
  - (3) As a result of the formation of the JV, the acquiring person will hold:
    - Voting securities of the JV having a value in excess of \$50 million

# *Joint Venture Corporations (cont'd)*

---

- An acquiring person having annual net sales or total assets of \$10 million or more (but less than \$100 million) must also file under the HSR Act if:
  - (1) The JV will have total assets of \$100 million or more;
  - (2) At least one other acquiring person has annual net sales or total assets of \$10 million or more; and,
  - (3) As a result of the formation of the JV, the acquiring person will hold:
    - Voting securities of the JV having a value in excess of \$50 million

# *Joint Venture Corporations (cont'd)*

---

- The assets of the JV are deemed to be all assets the joint venturers have agreed to transfer at any time to the JV, including any amount of credit that a venturer has agreed to extend to the JV or guarantee on behalf of the JV and any anticipated future contributions of assets or cash.
- The annual net sales of a JV are those of any entity where all or substantially all of the assets of the entity are contributed or where 50% or more of the voting securities are contributed.



# *Limited Liability Companies*

---

- Formal Interpretation 15  
64 Fed. Reg. 5808 (2/5/99 --  
*effective 3/1/99*) as amended)
- Amendment of Formal  
Interpretation 15  
64 Fed. Reg. 34,804 (6/29/99 --  
*effective 7/1/99*)

# *Limited Liabilities Companies (cont'd)*

---

- Formation of an LLC is reportable if:
  - (1) Two (2) or more pre-existing, separately controlled businesses will be contributed;
  - (2) At least one of the members will control the LLC (*i.e.*, have an interest entitling it to 50% of the profits of the LLC or 50% of the assets upon dissolution); and
  - (3) At least one other member is contributing assets or voting securities valued in excess of \$50 million.

# *Limited Liability Companies (cont'd)*

---

- Post-formation acquisitions of membership interests in LLCs *are not reportable*, except in the following two situations:
  - (1) When the acquisition of the membership interest results in the acquiring person, who had not previously filed for and consummated the acquisition of control of that LLC, holding 100% of the membership interests in an LLC; and,

# *Limited Liability Companies (cont'd)*

---

- Post-formation acquisitions of membership interests . . .
  - (2) When an LLC acquires an additional business and there is a change in the percentage membership interest of any member
    - treat as new formation

## Note:

- (a) where LLC acquires a business and no change in membership interest, treat as LLC acquisition
- (b) where LLC acquires assets not constituting a business but there is a change in membership interests, treat as LLC acquisition

# *Limited Liability Companies (cont'd)*

---

- “Business” is defined as assets that are operated as a business undertaking in a particular location or for particular products or services, even though those assets may not be organized as a separate entity.
  - includes intellectual property

# *Dual Listed Companies*

---

- DLCs -- a corporate “marriage contract”
  - parent companies retain separate identities
  - shareholders retain separate shares
  - economic equalization
  - unified management
- E.g., P&O Princess/Royal Caribbean
- PNO position evolving.

# *Hart-Scott-Rodino Act*

## FTC PNO Introductory Seminar

---

### Joint Ventures and Strategic Alliances

Robert S. Schlossberg

April 23, 2002

